

**ARBITRATION DECISION NO.:**

69

**UNION:**

OCSEA, Local 11, AFSCME, AFL-CIO

**EMPLOYER:**

Department of Mental Retardation  
and Developmental Disabilities,  
Apple Creek Developmental Center

**DATE OF ARBITRATION:**

December 4, 1987

**DATE OF DECISION:**

December 5, 1987

**GRIEVANT:**

Bruce M. Beachy

**OCB GRIEVANCE NO.:**

G-87-0471

**ARBITRATOR:**

Nicholas Duda, Jr.

**FOR THE UNION:**

Dennis A. Falcione

**FOR THE EMPLOYER:**

William T. Johnson

**KEY WORDS:**

Suspension  
Just Cause  
Progressive Discipline  
Absence From Duty  
    With Approval  
Probationary Employee  
Burden Of Proof

**ARTICLES:**

Article 24 - Discipline  
    §24.01-Standard  
    §24.02-Progressive  
Discipline

**FACTS:**

Grievant was employed at Apple Creek Developmental Center as a hospital aide. Grievant was suspended for one day for being "absent from duty without approval." This was the Grievant's third discipline for similar behavior within three months, the first time having received a verbal reprimand and the second time having received a written reprimand. Both disciplines were administered while the Grievant was a probationary employee who had no right to challenge the propriety of either discipline.

The Employer imposed the discipline on the basis that it was justified under the progressive discipline policy of the Agency, however, no center policy was submitted. The only evidence of such a policy or directive was testimony by a witness not employed at the Agency who testified that all Centers are required to have such a policy but that she had never seen a policy for this particular center until she saw one dated July 1987, many months after the incident and suspension in question.

There was no evidence presented to support a finding that an operational directive had been in effect at the time of the incident on November 16, 1986. Neither was there evidence of any kind that the Grievant had ever been told of a progressive discipline policy. In this respect the Arbitrator also noted that the claimed policy had not been applied according to the terms claimed with respect to the two disciplines stipulated above.

**ARBITRATOR'S OPINION:**

The Arbitrator stated that while the rules for expedited arbitrations suggest a liberal acceptance of testimony and documentary evidence, those rules do not eliminate the State's responsibility to present sufficient evidence to justify a finding of just cause. In this case, there was no testimony to support the finding that anyone at the Center had actually developed the claimed rules or made them known to the Grievant, or that such rules had actually existed at the time of the incident. As such, the State is directed to pay the Grievant the one day's pay that Grievant lost.

**AWARD:**

Grievance is sustained. The State is directed to make Grievant whole by paying him the one day's pay that he lost.

**TEXT OF THE OPINION:**

**IN THE MATTER OF ARBITRATION  
UNDER THE 1986 CONTRACT**

Between:

**State of Ohio  
(Department of Mental Retardation  
and Developmental Disabilities,  
Apple Creek Developmental Center)**

THE STATE

-and-

**Ohio Civil Service Employees**

**Association, Local 11  
AFSCME, AFL-CIO  
THE UNION**

**Grievance No.:**  
AP-07-87-MR/DD-AF-3-87-052

**OCB No.:**  
G-87-0471

ND 554

**Grievant:**  
Bruce M. Beachy

**Hearing Date:**  
December 4, 1987

**Before:**  
NICHOLAS DUDA, JR.,  
ARBITRATOR

**OPINION AND AWARD:**  
December 5, 1987

**CASE DATA**

**SUBJECT**

One day suspension for alleged "absence from duty without approval".

**APPEARANCES**

**FOR THE STATE**

William T. Johnson, Advocate, Presenting the Case  
Marilyn Reiner, Labor Relations Coordinator, Witness  
Joyce Frazier, Commerce Department, Observer  
Dick Daubenmire, Observer

**FOR THE UNION**

Dennis A. Falcione, Staff Representative, Presenting the Case

**STIPULATED FACTS**

1. The Grievant was suspended without pay on January 15, 1987.
2. The Grievant was charged with Tardiness.
3. The Grievant was scheduled to report to work at 7:00 AM on November 16, 1986.

4. On November 16, 1986, the Grievant called into work at 7:40 am, and reported to work at approximately 8:10 am.
5. The Grievant received a verbal reprimand on August 5, 1986, [for 5 separate tardiness in the period 6/26/86 - 8/4/86] and a written reprimand on October 27, 1986 [for being "AWOL" on 9/9/86 and 10/16/86]
6. The parties agree to proceed under the expedited rules of arbitration.
7. This grievance is properly before the arbitrator.

### **STIPULATED ISSUE**

Was the discipline imposed upon the Grievant for just cause? If not what shall the remedy be?

### **EVALUATION**

The grievance challenges the suspension issued on January 15, 1987 for tardiness on November 16, 1987.

At the hearing the Parties agreed that Grievant had been issued the two disciplines stipulated while he was a probationary employee who had no right to challenge the propriety of either discipline.

The written reprimand on October 29, 1986 was for the alleged "AWOL" on two days, 9/9/86 and 10/16/86. Grievant claims without refutation by the State that the incidents on 9/9/86 had been forgiven.

The Department imposed the subject discipline on the basis it was justified under progressive discipline policy specified in an Apple Creek Developmental Center Operational Directive. The only evidence of such a directive was testimony by a witness not employed at the Center that the State Director of Youth Services in Columbus requires that all centers have such a policy. No center policy was submitted and the witness acknowledged that she had never seen a policy for this center until one dated July 87, many months after the incident and suspension in question.

There was no evidence presented to support a finding that an operational directive had been in effect at the time of the incident on November 16, 1986. Neither was there evidence of any kind the Grievant had ever been told of a progressive discipline policy. In this respect the Arbitrator also notes that the claimed policy had not been applied according to the terms claimed in respect to the two disciplines stipulated above.

The case file was not even complete.

If other tests of just cause were considered, their satisfaction is also questionable; the deficiencies need not be belabored.

Although the rules for expedited arbitration suggest a liberal acceptance of testimony and documentary evidence, those rules do not eliminate the State's responsibility to present sufficient evidence to justify a finding of just cause. In this case there was no evidence to support that anyone at Apple Creek had actually developed the claimed rules or made them known to Grievant or that such rules actually had existed at the time in question.

### **AWARD**

The grievant is granted. The State is directed to make Grievant whole by paying him the one day's pay that he lost.

Nicholas Duda, Jr., Arbitrator

